IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.4284/2006.

30.11.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.V.D.Gathala, for the petitioners.
Mr.Kamlesh Pareek, for the respondents.

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The matter has come up on the application for the vacation of *ex-parte* stay order passed by this court on 31.05.2006.

With the consent of the parties, since the arguments on the aforesaid application as well as on the main case are identical, the case was finally heard.

The writ petition has been filed challenging the order of the learned court below by which the application filed by the petitioner under Order 9 Rule 13 CPC for setting aside the *ex-parte* decree dated 16.10.2003. was dismissed by the trial court and the appeal filed against that order was also dismissed.

It is in this background that the writ petition has

been filed.

The arguments were heard and it was revealed that the petitioner did not turn up at the stage when the last witness of the plaintiff was to be cross-examined. The other three witnesses have already been cross-examined by the defendant-petitioner.

Learned counsel for the petitioner submitted that the petitioner could not attend the court on the date when the case was fixed for the cross-examination of the witnesses on account of illness of the petitioner. However, no supporting evidence of the petitioner being ill was filed before the trial court though an application under Order 41 Rule 27 CPC was filed before the appellate court along with medical certificate. Be that as it may, in the facts and circumstances, I deem it just and proper to direct that the *ex-parte* decree dated 16.10.2003 is set aside on the condition of the payment of cost of Rs.5,000/- to the plaintiff-non-petitioner on the date fixed hereinafter.

The parties are directed to appear before the learned trial court on 06.12.2006. The learned trial

court shall fix the date for 11th December, 2006 for the cross examination of the remaining witness of the plaintiff by the defendant. Thereafter, the matter shall be posted on 15th December, 2006 for the evidence of the defendant's witnesses, all of whom will be brought by the defendant himself without issuance of any summon and thereafter, it is expected that since the suit itself was filed in the year 1984, the learned trial court shall take steps to decide the suit before the Winter Vacations, as far as possible.

In view of the above, the writ petition, the stay application as well as the application for vacation of *ex-parte* stay order stand disposed of. The above order is subject to payment of costs as ordered herein.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.